

# THE UNKNOWN MINI-COSTCO CASE IN LOUISIANA

Source: Beer Business Daily

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While the Costco victory got lots of ink earlier this year, there was a little-known three-tier victory which was handed down recently which some in the industry are calling the mini-Costco case. Though it involves smaller retailers in Louisiana, the verdict of the Third Circuit appellate court carries no less weight.

In this case two retailers in Louisiana, Jungle Lounge and Restaurant, and B&S Corner Grocery Store, sued the state throwing many of the same flaming arrows that Costco did at the state of Washington, challenging the state's bans on credit, ban on volume discounts, ban on central warehousing, ban on retailers acting as distributors, ban on transshipping, and a few other provisions. The retailers got the lawsuit thrown out in trial court based mainly on the fact that, if successful, the result would be the "functional collapse of the retail and wholesale tiers of Louisiana's three-tiered alcoholic beverage distribution system," and besides the bans aren't unconstitutional. The retailers appealed, naturally.

In the appellate decision, they actually draw upon the Costco case. Ultimately, not to bore you with too many details, the court ruled that the 21st Amendment trumps the Sherman Antitrust Act, namely because the Sherman Act was enacted in 1890 and so certainly the 21st Amendment must prevail. " Even if the Sherman Act, enacted in 1890, was once understood to override such State measures with respect to alcoholic beverages, the Commerce Clause basis for the Sherman Act has since been narrowed by the 21st Amendment, and the Sherman Act should no longer be understood or applied in this manner." The Louisiana State Supreme Court denied the plaintiffs' writ application on August 29. Wow. That's the strongest language I've seen from a court on the legitimacy of the 21 st Amendment. While it's only legally binding in Louisiana, it's a precedent that can be used nationally.